

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15/06/2004

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THE HONOURABLE MR.JUSTICE P.K.MISRA

AND

THE HONOURABLE MR.JUSTICE F.M.IBRAHIM KALIFULLA

W.P.NO.14052 OF 2004

AND

W.P.M.P.NO.16565 OF 2004

1. The Secretary to Government,
Home (SC) Department,
Govt. Of Tamil Nadu
Chennai-9

2. The Director General of Police
Govt. Of Tamil Nadu,
Chennai-2 .. Petitioners

-Vs-

1. T.K. Damodharan
Deputy Superintendent of Police,
Keelakarai,
Ramanathapuram District

2. The Registrar,
Tamil Nadu Administrative Tribunal,
Chennai-104 .. Respondents

This writ petition is preferred under Article 226 of the Constitution of India praying for the issue of a writ of certiorari to call for the records pertaining to the order dated 31.1.2003 made in O.A.No.468 7 of 2002 on the file of the Tamil Nadu Administrative Tribunal, Chennai, the second respondent and quash the same.

!For Petitioners : Mr.S.T.S.Murthi, Spl.G.P.

^For Respondents : Mr.K.Venkataramani for R1
R-2 Tribunal

:ORDER

(ORDER OF THE COURT WAS MADE BY F.M.IBRAHIM KALIFULLA, J)

We heard the learned Special Government Pleader appearing for the writ petitioners as well as Mr.K.Venkataramani, Counsel, who took notice for the contesting first respondent herein.

2. What is challenged herein is the order of the State Administrative Tribunal dated 31.1.2003 in O.A.Nos.5153 of 2001 and 4687 of 2002, in and by which the Tribunal has held that the punishment of censure suffered by the petitioner will have the effect of only delaying the first respondent's promotion as Deputy Superintendent of Police for one year, i.e. from 1994-95 to 1995-96 and that his seniority as Deputy Superintendent of Police has to be fixed with reference to 1995-96. The Tribunal has further directed that whenever the promotion to the next post of Additional Superintendent of Police fell due, he shall be considered if he was otherwise qualified. There was a disciplinary action pending against the first respondent in D.E.No.32/89. In the said circumstances, his inclusion in the list of 1994-95 for the post of Deputy Superintendent of Police was deferred. When the petitioner came forward with OA in OA No.1975 of 1995 before the Tribunal praying for his inclusion in the list of 1994-95 by ignoring the departmental proceedings, the said application came to be allowed and a direction was given to the department to include the first respondent's name in the panel for 1994-95 notwithstanding the pendency of D.E.No.32/89 and subject to the result of the said disciplinary proceedings. Pursuant to the said order, the first respondent was promoted on 2.1.1997 and he has also joined duty as Deputy Superintendent of Police. Subsequently, D.E.No.32/89 came to be concluded and final orders were passed on 21.7.1998, in which the punishment of censure came to be imposed on the first respondent. According to the first respondent, the effect of imposition of the said punishment of censure would only result in denial of promotion for a period of one year. By its order, which was impugned before the Tribunal, namely, the one dated 17.5.2001 in G.O.Ms.No.502, the petitioner herein had held as under:

"4) The Government have carefully examined the case with reference to the Tamil Nadu Administrative Tribunal's order dated 15.02.2001 in O.A.No.1148/2001. The charges for which his promotion was deferred (i.e. O.E.No.32/89) stand proved and ended with a punishment. As per the instructions issued in G.O.Ms.No.368, Personnel and Administrative Reforms (Per-s) Department, dated 18.10.1993, he is not eligible for inclusion in the panel for the year 1994-95. The Government have therefore decided to reject his claim for inclusion in the said panel. Accordingly, the Government direct that the claim of Thiru T.K. Damodharan, Deputy Superintendent of Police for inclusion of his name in the panel of Deputy Superintendent of Police, Category(1) for the year 1994-95 be rejected."

3. Therefore, for denying the first respondent's promotion as Deputy Superintendent of Police, Category(1) for the year 1994-95, the petitioners herein solely relied upon the instructions issued in G.O.Ms. No.368, P & A.R(Per.S) Dept., dated 18.10.1993. Therefore, the question that remains to be considered is as to whether while applying the instructions contained in the said G.O.Ms.No.368, dated 18.10.1993, the first respondent could be denied his promotion to the post of Deputy Superintendent of Police till the punishment of censure came to be passed in the year 1998 and even subsequent thereafter. For analysing the said purpose, when we looked into the contents of G.O.Ms.No.368, dated 18.10.1993 we find that in paragraph 2(c) it has been stated as under:

"(c) For ordinary promotions, the fitness of the person with reference to all relevant factors has to be considered. The unfit persons have to be eliminated. As far as punishments are concerned, (except where a specific punishment period is awarded), it should be examined whether the proved irregularities took place within the specified period of service taken up for analysis and whether the irregularities were such as to make the individual unfit for the job for analysis and whether the irregularities were such as to make the individual unfit for the job in the higher category in the year in which his case is considered for inclusion in the panel for appointment to the higher post by promotion/by recruitment by transfer."

4. So, a consideration of the above said provisions contained in the G.O. only states that all relevant factors have to be considered and that even the punishments imposed are to be examined with reference to the nature of the irregularities alleged to have been committed by the concerned individual. When it comes to the question of granting promotion in the case of the petitioner, admittedly the only charge, which was found proved against him was that for the purpose of construction of a house of his own, the first respondent was stated to have received a sum of Rs.25000/- by way of gift from his father, who was admittedly a Government Servant in the rank of Block Development Officer. In such circumstances, we are unable to appreciate the stand of the petitioners that by virtue of the said irregularity stated to have been proved, namely the receipt of gift for a sum of Rs.25000/- by the first respondent without obtaining necessary permission from the concerned Authorities by itself would deprive him of his rightful promotion for a period from 1994-95 to even 2000-01.

5. The learned counsel for the first respondent would state that while by the order impugned before the Tribunal, namely, the one dated 17.5.2001, it was held that the first respondent was not entitled for inclusion in the panel of Deputy Superintendent of Police, Category(1) for the year 1994-95, he was denied such inclusion even upto the year 2000-01. In such circumstances, we hold that the so-called irregularities found to have been proved against the first respondent, by itself would not in any way mitigate the right of the first respondent to seek for promotion, which fell due in the appropriate time. Admittedly, the first respondent himself would contend that the punishment of censure would only deprive him of his promotion for a period of one year from the relevant year when it fell due. The promotion as from 1995-96 to the post of Deputy Superintendent of Police ought to have been granted to the first respondent as has been held by the Tribunal by the order impugned in the writ petition. Therefore, we do not find any irregularity or illegality in the order of the Tribunal in granting the said relief as per the order impugned in the writ petition. We do not find any merit in the writ petition.

6. In the result, this writ petition fails and the same is dismissed. No costs. We also direct the petitioners herein to implement the order of the Tribunal within a period of one month from the date of production of copy of this order. Consequently, connected W.P.M.P. is closed.

Index : Yes

Internet : Yes

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To

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